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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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In the Matter of)

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Order Instituting Rulemaking to Implement Certain) D.T.E. 99-18

Provisions of Massachusetts' Anti-Slaming Law,)

G.L. c. 93, §§ 108-113 and G.L. c. 159, § 12E.)

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INITIAL COMMENTS OF RCN TELECOM

SERVICES OF MASSACHUSETTS, INC.

RCN Telecom Services of Massachusetts, Inc. ("RCN"), by undersigned counsel, respectfully submits its Initial Comments on the Order Instituting Rulemaking (the "Order"), issued June 10, 1999 by the Department of Telecommunications and Energy (the "Department") in the above-referenced proceeding.

I. INTRODUCTION

RCN supports the proposed rules and regulations to 220 C.M.R. §§ 13.00 et seq. set forth in the Order, and looks forward to their implementation. However, there are several points in the proposed rules and regulations which RCN believes could be clarified by the Department to ensure that IXCs and LECs are aware of precisely what their responsibilities are with regard to consumer protection to prevent slamming.

II. SPECIFIC ISSUES

A. Definition of "Letter of Agency"

In proposed Section 13.02, "Letter of Agency" or "LOA" would be defined as:

a document meeting the form and content requirements of 13.04(1)(a), signed by a customer to indicate that the customer has authorized a change of his or her IXC or LEC.

Proposed 220 C.M.R. 13.02. However, there is no Section 13.04(1)(a) in the proposed rules and regulations. Instead, proposed Section 13.04(1), Unauthorized Change, states that:

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An unauthorized change of a customer's primary IXC or LEC shall occur if the IXC or LEC that initiated the change fails to provide the required evidence set forth in M.G.L. c. 93, § 109 for each and every type of service sold . . .

Proposed 220 C.M.R. §13.04(1).

Because Section 13.04(1) itself does not identify what a LOA is, but only refers to M.G.L. c. 93, § 109, RCN suggests that Section 13.02 refer directly to M.G.L. c. 93, § 109(b) for the definition and requirements for a LOA.

B. Persons Authorized to Make Carrier Changes

RCN is concerned that there is some ambiguity as to who is authorized to request a carrier change. M.G.L. c. 93, § 109 refers throughout to the "customer," which is defined in § 108 as "a person who resides in the commonwealth and subscribes to local or long distance telecommunications services." This definition presumably coincides with the term "customer of record," as that term is commonly used in the industry. However, proposed Section 13.03(2), Authority to Authorize a Change in Carrier, on the other hand, would provide that ". . . to authorize a change in carrier or service, the person to whom the TPV agent spoke must be at least 18 years of age. For a residence, the customer of record is presumed to have this authority if the customer meets the minimum age requirement." Thus there is at least the implication in the proposed rule that persons other than the customer of record are authorized to make carrier or service changes.

Consequently, it is not clear whether only the customer of record can authorize a service or carrier change, or whether other persons in a household also can do so. This poses a problem for carriers when determining whether verification has been properly obtained. For example, in the past, the Department has suggested that a customer was "slammed" even though a TPV recording existed of the husband of the family authorizing a carrier change, because the wife was the only customer of record. RCN respectfully suggests that the Department should expressly clarify whether persons other than the customer of record can authorize carrier changes.

C. Follow-up Mailing to Third Party Verification

Proposed Section 13.03(5) would provide that, when a carrier initiating a change uses Third Party Verification ("TPV"), within two weeks of the TPV call, the carrier must send a letter or postcard to the customer with the following information:

- (a) the name and address of the customer of record;
- (b) a description of the terms and conditions of the new service;
- (c) the amount of any charge(s) that will be levied on the customer as a result of this change;
- (d) a toll-free number of the new carrier for customer complaints; and
- (e) the names and addresses of the new carrier and TPV company.

Proposed 220 C.M.R. 13.03(5).

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This proposed mailing, which would impose significant costs on carriers, raises two concerns.

First, this mailing, is needlessly duplicative; the third party verifier will have already informed the customer of some of this information. M.G.L. c. 93, § 109(c)(2), and Proposed 220 C.M.R. 13.03(3) and (4). Second, §§ 108-113 of M.G.L. c. 93, do not require that a new carrier provide this information to the new customer; thus, the authority for the Department requiring such a mailing is unclear.

However, §111(b) requires that when a customer changes his or her IXC or LEC, the LEC must include in the customer's next monthly statement a notice including: (i) the customer's telephone number for which the IXC or LEC has been switched; and (ii) the name, address and telephone number of the original IXC or LEC. M.G.L. c. 93, § 111(b). (1) RCN suggests, therefore, if the Department decides to require that the information specified by proposed Section 13.03(5) be sent to the customer, that this information be required to be incorporated into the notice required by Section 111(b). This would avoid the additional costs that would be caused by proposed § 13.03(5) and would not increase the costs to LECs already required by M.G.L. c. 93 § 111(b), while ensuring that customers received the information specified in proposed § 13.03(5).

D. Informal Dispute Resolution

Proposed Section 13.05 would provide for an alternative informal dispute resolution procedure for slamming complaints. RCN agrees that the Department should act upon the authorization in M.G.L. c. 93 § 110(k) to "promulgate rules and regulations to establish an alternative informal procedure for the resolution of such complaints at the election of the consumer." However, RCN has two concerns.

First, the procedure set forth in proposed Rule 13.05(1) does not require the Department to consult with the carriers accused of making unauthorized carrier changes. In fact, the proposed regulation does not even require the accused carrier to be notified by the Department that a complaint has been filed until the Department has already reached a determination. (2) RCN respectfully submits that the proposed rule must be revised to require the Department to provide timely notice of the Complaint to the accused carrier, and to allow the accused carrier to submit evidence that authorization for the carrier change was properly obtained.

Second, and even more seriously, proposed §13.05(2) would provide that a decision against a carrier in the alternative informal dispute resolution procedure could result in fines of up to \$3000 for each resolution adverse to a carrier and would count towards the limit of 20 unauthorized carrier changes in a 12 month period, beyond which the Department may sanction the carrier by prohibiting service for up to one year. Section 112(c) of M.G.L. c. 93 provides for, and fundamental considerations of due process permit, such penalties only after formal adjudicatory proceedings. Neither § 112(b) and (c) nor the authorization in § 110(k) for establishment of "an alternative informal procedure for the resolution of such complaints" contemplates or authorizes monetary sanctions for such informally arrived-at "resolution[s]" or the inclusion of such informally arrived-at "resolution[s]" in the slamming determinations, which can result in decertification for up to a year. There is simply no statutory or constitutional basis for such sanctions in an "alternative informal procedure," and neither this nor any other alternative dispute resolution procedure was intended to include such sanctions.

III. CONCLUSION

RCN generally supports the proposed rules promulgated by the Department because such rules will make it easier for subscribers to understand the changes they are requesting and to enforce their rights when a dispute arises. However, as discussed above, certain of the proposed provisions will lead to confusion if they are not more precisely delineated and certain others exceed the scope of the underlying statute. Specifically, RCN submits that:

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- 1) the term "Letter of Agency" should be more clearly defined;
- 2) whether persons other than the "customer of record" are authorized to make carrier changes should be clarified;
- 3) follow-up mailings to third party verification calls should not be required, or, if they are required, they should be included in the customer's next monthly statement; and,
- 4) with regard to informal complaint proceedings, carriers must be provided with notice and an opportunity to present evidence in their favor, and informally determined resolutions may not be considered when applying sanctions to a carrier.

RCN respectfully requests that the Department revise the proposed rules and regulations for the reasons and to the extent set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 29th day of June 1999, true and correct copies of the foregoing Initial Comments of Residential Communications Network of Massachusetts were served upon the following by e-mail and overnight mail:

Mary L. Cottrell

Secretary

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1. It should be noted that, despite the statutory requirement, a LEC may frequently not have this information, at least with respect to resellers. Thus, the Department may wish to have its staff work with concerned carriers to develop realistic means

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of meeting this requirement.

2. "Upon reaching a final conclusion, the Department shall notify all parties to the dispute of the Department's determination." Proposed Section 13.05(1)(b).